

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Dobson Cellular Systems, Inc.)	
Petition for Agreement with Redefinition of Service Areas)	
of Certain Rural Incumbent Local Exchange Carriers in the)	
State of Michigan Pursuant to 47 C.F.R. Sec. 54.207(c))	

**OPPOSITION TO
DOBSON CELLULAR SYSTEMS, INC.
PETITION FOR AGREEMENT WITH REDEFINITION OF SERVICE AREAS OF
CERTAIN ILECS IN THE STATE OF MICHIGAN**

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Summary

Upper Peninsula Telephone Company, Inc. (“UPTC”) and Hiawatha Telephone Company, Inc. (“HTC”) oppose the petition of Dobson Cellular Systems, Inc. (“Dobson”) for Commission assent to the “redefinitions” of their service areas that allegedly were “approved” by the Michigan Public Service Commission (“Michigan PSC”) in connection with its grant of eligible telecommunications carrier (“ETC”) status to Dobson.

First, a careful reading of the Michigan PSC’s September 21, 2004 Order in its Case No. U-14257 and its August 26, 2003 Opinion and Order in its Case No. U-13714 indicate that the Michigan PCS appears to have “redefined,” at maximum, only UPTC’s Amble and Manistee River exchanges as new “service areas” for ETC purposes. Moreover, even those alleged “redefinitions” were not subject to the “rigorous and fact-intensive analysis” recommended by the Joint Board for redefinition proceedings. Rather, they involved only the supplemental, post-decision listing of the two exchanges by Dobson’s predecessor as areas that it was serving or intended to serve.

Second, Dobson’s redefinition requests do not comply with the three criteria established by the Commission and the Joint Board for evaluating redefinition requests. They involve substantial cream skimming, for they seek to “redefine” UPTC exchanges with population densities and access line densities much larger than the comparable densities of the portions of the UPTC study area that Dobson will not serve. They disregard the protected regulatory status of rural telephone companies, particularly the stringent public interest showing required for designation of competitive ETCs in rural telephone company service areas as well as the detailed

analyses recommended by the Joint Board for redefinition of rural telephone company service areas. Finally, the proposed redefinitions will exacerbate the inequities and imbalances resulting from the receipt of High Cost Fund support by wireless carriers like Dobson that is based upon per-line support received by rural telephone companies (which support is based upon costs calculated for the entire study area rather than for “redefined” service areas).

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Upper Peninsula Telephone Company, Inc. ("Upper Peninsula" or "UPTC") and Hiawatha Telephone Company, Inc. ("Hiawatha" or "HTC") hereby oppose the October 26, 2004 petition of Dobson Cellular Systems, Inc. ("Dobson") for Commission assent to the redefinition of the service areas of certain incumbent rural local exchange carriers that allegedly were "approved" by the Michigan Public Service Commission ("Michigan PSC") in connection with its grant of eligible telecommunications carrier ("ETC") status to Dobson.

Upper Peninsula and Hiawatha oppose the Dobson petition insofar as it relates to their Michigan study areas. First, the Michigan PSC orders¹ relied upon by Dobson do not clearly redefine the Upper Peninsula study area so as to carve out the alleged seven new "service areas" with respect to Dobson or its predecessor, nor do they clearly redefine the Hiawatha study area so as to carve out the alleged four new "service areas" with respect to Dobson or its predecessor. Second, even if the Michigan PSC had clearly redefined the Upper Peninsula and Hiawatha

¹ *Application of Dobson Cellular Systems, Inc. for designation as an eligible telecommunications carrier*, Case No. U-14257, Order (September 21, 2004); *Application of NPI-Omnipoint Wireless, LLC for designation as an eligible telecommunications carrier pursuant to Section 214(e)(6) of the Communications Act of 1934*, Case No. U-13714, Opinion and Order (August 26, 2003).

study areas in the manner asserted by Dobson, its action did not have satisfy the three criteria adopted by the Commission and the Federal-State Joint Board on Universal Service (“Joint Board”) for redefining rural telephone company study areas.²

Upper Peninsula and Hiawatha

Upper Peninsula is a rural telephone company that serves nineteen (19) rural exchanges in northern Michigan. These exchanges serve 7,278 access lines within rural areas encompassing 2,994.6 square miles, or an average of 2.4304 access lines per square mile.

Hiawatha is a rural telephone company that serves nine (9) rural exchanges in northern Michigan. These exchanges serve 6,403 access lines within rural areas encompassing 2,577 square miles, or an average of 2.4847 access lines per square mile.

The Michigan PSC Orders Do Not “Redefine” the Upper Peninsula and Hiawatha Study Areas As Claimed

Dobson seeks Commission concurrence with what it claims are redefinitions of certain incumbent LEC (“ILEC”) service areas by the Michigan PSC in its September 21, 2004 Order granting ETC status to Dobson.

However, the Michigan PSC’s September 21, 2004 Order (which is attached as Exhibit A to Dobson’s petition) is a very brief and cursory order, adopted without a hearing, to allow Dobson to succeed to the ETC rights and privileges that it acquired when it purchased the operating assets of NPI-Omnipoint Wireless, LLC (“NPI”) in June 2004. The Order states that “Dobson is applying for ETC designation throughout the wire centers wholly contained within the service area previously served by NPI” (Order, p. 2). It declares that “Dobson further seeks

² These criteria are: (1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other local exchange carriers (“LECs”); and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level. Virginia Cellular, LLC, 19 FCC Rcd 1563, par. 41 (2004); Recommended Decision (Federal-State Joint Board on Universal Service), 12 FCC Rcd 87, 179-80 (1997).

designation as a competitive ETC throughout the specific rural telephone company study areas identified on Exhibit D [to Dobson's Michigan application], subject to the FCC's approval of the [Michigan PSC's] prior decision to redefine the service area requirement in Case No. U-13714."

Dobson's petition to this Commission seeks the redefinition of seven exchanges or wire centers (Amble, Chester, Drummond Island, Grace Harbor, Manistee River, Rexton and Scott Point) in Upper Peninsula's existing study area as separate "service areas" with respect to Dobson. It also seeks redefinition of four exchanges or wire centers (Deer Park, Eckerman, Hulbert and Paradise) in Hiawatha's existing study area as separate Dobson "service areas." Dobson claims that all eleven exchanges were included in service area redefinitions made by the Michigan PSC with respect to NPI in its August 26, 2003 Opinion and Order in Case No. U-13714 (Dobson petition, 7th page).

The Michigan PSC's August 26, 2003 Opinion And Order in Case No. U-13714 (which is attached to Dobson's petition) did not redefine the Upper Peninsula and Hiawatha study areas and service areas in the manner asserted by Dobson. Rather, the Michigan PSC expressed "concerns" with NPI's redefinition proposals, and rejected its proposal to use political boundaries as the basis for redefined study areas or service areas. Opinion and Order, p. 14. The Michigan PSC instead found that "NPI's service area for purposes of determining universal service obligations and support mechanisms should be coterminous with established exchanges." Id., p. 16. It then directed NPI "to file in this docket (and serve upon the other parties) a listing of the exchanges where it currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations." Id.

On February 24, 2004, six months after the August 23, 2003 Opinion and Order in Case No. U-13714, NPI submitted the listing required therein via a filing entitled “NPI-Omnipoint Wireless, LLC Amended Filing Pursuant to the August 26, 2003 Order of the Michigan Public Service Commission” (copy attached to Dobson’s petition). The NPI listing “of the exchanges where [it] currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations” included only two Upper Peninsula exchanges (the Amble and Manistee River exchanges) and no Hiawatha exchanges (see 11th page of Exhibit A to the February 24, 2004 NPI filing).

Hence, in connection with the Michigan PSC’s August 23, 2003 Opinion and Order in Case No. U-13714, it appears that NPI may have been allowed to “redefine” Upper Peninsula’s study area to establish new NPI “service areas” in, at most, the Amble and Manistee River exchanges. Even this much is not clear, for the Michigan PSC did not itself “redefine” the Amble and Manistee River exchanges as new NPI “service areas.” Rather, the Michigan PSC merely ordered NPI to provide, and appears to have accepted for filing, the subsequent list that included the Amble and Manistee River exchanges as alleged existing or future NPI service areas.

What is clear is that NPI did not claim in Case No. U-13714 to serve Upper Peninsula’s Chester, Drummond Island, Grace Harbor, Rexton and/or Scott Point exchanges, and did not seek or obtain “redefinition” of Upper Peninsula’s study area to establish new “service areas” with respect to any of these five exchanges. It is equally clear that NPI did not claim in Case No. U-13714 to serve any of Hiawatha’s nine exchanges, and did not seek or obtain “redefinition” of Hiawatha’s study area to establish new “service areas” with respect to any of these nine exchanges.

Given that Dobson had couched its redefinition request to the Michigan PSC in Case No. U-14257 in terms of that agency's "prior decision to redefine the service area requirement in Case No. U-13714" (September 21, 2004 Order, p. 2), it appears that the September 21, 2004 Order for which Dobson requests concurrence redefined, at most, the two new "service areas" with respect to Upper Peninsula (i.e., its Amble and Manistee River exchanges) and no new "service areas" with respect to Hiawatha. Contrary to Dobson's assertions on the seventh page of its petition, the Amble (Code: AMBLMIXJ) and Manistee River (Code: MRVRMIXI) exchanges were the only Upper Peninsula or Hiawatha "service areas" listed by RPI in the Case No. U-13714 filing and order on which Dobson relies.

Therefore, it appears, at the very most, that the Michigan PSC may have indirectly "redefined" Upper Peninsula's study area to carve out new "service areas" for RBI and its successor Dobson in the Amble and Manistee River exchanges. If such an indirect "redefinition" is appropriate (and Upper Peninsula and Hiawatha believe that it is not, for state commissions should be required to conduct rigorous and fact-intensive analyses of requests for service area redefinition, and to issue specific orders granting or denying them rather than allowing ETCs to submit post-decision lists of exchanges they intend to serve), the Amble and Manistee River "redefinitions" are the only ones that may be ripe for Commission consideration.

**Dobson and the Michigan PSC Have Not Complied With
The Redefinition Criteria Adopted by the Commission and the Joint Board**

As indicated above, the Commission and the Joint Board have determined that the following three criteria must be satisfied before rural telephone company study areas may be redefined for competitive ETC purposes: (1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to

calculate costs at something other than a study area level. Virginia Cellular, LLC, 19 FCC Rcd 1563, par. 41 (2004); Recommended Decision (Federal-State Joint Board on Universal Service), 12 FCC Rcd 87, 179-80 (1997).

Cream skimming. Rural cream skimming occurs when a competitor serves the lower-cost, higher-revenue customers in a rural telephone company's study area. The Commission has recognized that this may occur intentionally, or as a result of the location of a wireless carrier's licensed coverage area. Virginia Cellular, at par. 32-33. In either case, cream skimming is likely to undercut the ability of the affected rural telephone company to serve its entire study area. As such, it should preclude satisfaction of the special Section 214(e)(2) "public interest" finding required for designation of additional ETCs in areas served by rural telephone companies.

Although the Commission has recognized that there are other factors that define high-cost areas, it has been using low population density as its principal indicia of high-cost areas. Virginia Cellular, par. 34.

In a September 17, 2004 "Supplemental Filing" to its Michigan PSC application³ (copy attached to Dobson's petition), Dobson presented population, area and population density data for the exchanges and study areas of several LECs, including Upper Peninsula and Hiawatha. Dobson's own data⁴ demonstrate that the Upper Peninsula exchanges that Dobson wants redefined as new "service areas" have a much higher population density (and, therefore, are likely to contain significantly more lower-cost, higher-revenue customers) than the remaining exchanges in Upper Peninsula's study area.

³ This "Supplemental Filing" was not mentioned in the Michigan PSC's September 21, 2004 Order in Case No. U-14257, and does not appear to have been considered or relied upon by the Michigan PSC. It was dated on Friday, September 17, 2004, and does not appear to have come to the attention of the Michigan PSC during the one business day before it adopted its Order on Tuesday, September 21, 2004.

⁴ Upper Peninsula and Hiawatha do not accept or vouch for the accuracy of Dobson's population density data. In fact, they note very substantial differences in the area (square miles) which Dobson estimates for each of their exchanges vis-à-vis the accurate exchange sizes which they have measured.

Dobson's own data show that the Amble exchange (population density: 46.9099 people per square mile) is by far the highest-density exchange served by Upper Peninsula. Together, the Amble and Manistee River exchanges have a population density of 12.1736 people per square mile, or over 230 percent of the population density of Upper Peninsula's entire 19-exchange study area (5.2832 people per square mile). Hence, if Upper Peninsula's Amble and Manistee River exchanges are the only Upper Peninsula exchanges redefined as "service areas" by the Michigan PSC, their relative population densities indicate that Dobson is proposing to engage in substantial effective cream skimming. Dobson's request for Commission consent to the redefinition of these two exchanges as "service areas" for its ETC purposes should be denied on the basis of Dobson's own population density data.

If all seven Upper Peninsula exchanges that Dobson now seeks to redefine as "service areas" are considered, Dobson's own population density data still indicate that it will engage in substantial cream skimming. Dobson's data indicate that the seven targeted exchanges have an aggregate population density of 7.54 people per square mile, or over 168 percent of the aggregate population density (4.48 people per square mile) of the twelve Upper Peninsula exchanges that Dobson will not serve.

Upper Peninsula believes that "access lines per square mile" also measures relative cost and revenue for purposes of determining potential cream skimming. It has measured the relative "access lines per square mile" of its affected exchanges as follows:

<u>Exchange</u>	<u>Total Access Lines</u>	<u>Square Miles</u>	<u>Access Lines per Square Mile</u>
Amble	270	18.40	14.6739
Chester	1,274	86.50	14.7283
Drummond Island	1,130	133.80	8.4454
Grace Harbor	170	42.80	3.9720
Manistee River	56	106.80	0.5243
Rexton	141	239.00	0.5900
Scott Point	27	78.00	0.3462
Seven Affected Exchanges	3,068	705.30	4.3499
All 19 UPTC Exchanges	7,278	2,994.60	2.4304

Using this “access lines per square mile” measure, the seven Upper Peninsula exchanges for which Dobson seeks redefinition have an access line density over 178.98 percent higher than the access line density of Upper Peninsula’s entire 19-exchange study area. This second measure further demonstrates that Dobson is effectively attempting to cream skim the higher density and lower cost portions of Upper Peninsula’s study area. Its requested “redefinitions” should be denied due to the cream skimming shown by its own population density data as well as Upper Peninsula’s access line density data.

Rural telephone company competitive footing. Section 214(e)(2) of the Communications Act requires a state commission to make a specific finding that designation is in the public interest before designating an additional ETC for an area served by a rural telephone company. The Joint Board has interpreted this provision as “contemplating use of a higher level of scrutiny for ETC applicants seeking designation in areas served by rural carriers.” *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, released February 27, 2004, at par. 38. It found that Section 214(e)(2) “provides the state commissions with the obligation and statutory duty to perform an in-depth public interest analysis concerning ETC applications in rural carrier study areas.” *Id.* The Joint Board also

encouraged the states and the Commission “to conduct a rigorous and fact-intensive analysis of requests for service area redefinition.” *Id.*, at par. 55.

In its Case No. U-14257, the Michigan PSC conducted neither an in-depth public interest analysis of Dobson’s request for ETC designation nor a rigorous and fact-intensive analysis of its requests for service area redefinition. Rather, the Michigan PSC refused even to solicit comment on the Dobson ETC application because comments “would only further delay action on the application.” September 21, 2004 Order, p. 2. It made no public interest analysis, but merely “concluded” without considering any evidence that “ETC designation for Dobson promotes competition and is in the public interest.” *Id.* Finally, it conducted no analysis of Dobson’s requested service area redefinitions, but appears merely to have granted Dobson’s request that the redefinitions previously approved for NPI in the earlier Case No. U-13714 (including redefinition with respect to Upper Peninsula’s Amble and Manistee River exchanges) be forwarded to this Commission for its approval. *Id.*, p. 2. Upper Peninsula further notes that the Michigan PSC conducted no “rigorous and fact-intensive analysis” of NPI’s requests for service area redefinition in the earlier Case No. U-13714. Rather, the Michigan PSC allowed NPI merely to list Upper Peninsula’s Amble and Manistee River exchanges in a post-decision filing as areas that it served or intended to serve, without requiring it to prove that these rural telephone company exchanges should be redefined as separate “service areas” for ETC purposes.

Because the Michigan PSC has not conducted the requisite analyses of Dobson’s ETC and service area redefinition requests, the Commission should not consent to Dobson’s petition without conducting its own “rigorous and fact-intensive analysis of [Dobson’s] requests for service area redefinition,” or requesting an appropriate analysis from the Michigan PSC.

Administrative burden. It does not appear that redefinition of service areas would require Upper Peninsula or Hiawatha to record or calculate their costs at something other than a study area level. However, under the Commission's current rules and procedures, redefinition would allow Dobson to receive High Cost Fund support based upon the per-line High Cost Fund support received by Upper Peninsula and Hiawatha for their entire existing Michigan study areas. This would be the case even though Dobson would be serving only two or seven of the nineteen exchanges in Upper Peninsula's study area, and at the most only four of the nine exchanges in Hiawatha's study area.

Upper Peninsula and Hiawatha believe that wireless carriers like Dobson reap underserved and inequitable windfalls when they receive High Cost Fund support based upon the costs of rural telephone companies. Permitting Dobson to receive High Cost Fund support based upon costs incurred throughout the entire Upper Peninsula and Hiawatha study areas when Dobson serves less than half of the exchange areas within each study area will exacerbate the inequities and gaming inherent in this approach.

Conclusion

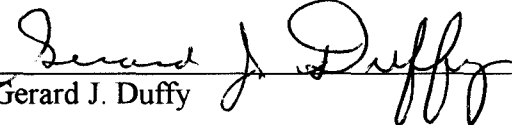
Upper Peninsula and Hiawatha request that the Commission deny Dobson's petition for the Commission's assent to the redefinition of their Michigan study areas to allow Dobson to enjoy ETC status within certain of their exchanges.

First, a careful reading of the Michigan PSC's September 21, 2004 Order in its Case No. U-14257 and its August 26, 2003 Opinion and Order in its Case No. U-13714 indicate that the Michigan PCS, at maximum, has purported to redefine Upper Peninsula's Amble and Manistee River exchanges as new "service areas" for ETC purposes. Moreover, even that alleged redefinition did not entail the "rigorous and fact-intensive analysis" recommended by the Joint

Board but rather involved only the subsequent, post-decision listing of the two exchanges by Dobson's predecessor as areas that it was serving or intended to serve.

Second, Dobson's redefinition requests do not comply with the three criteria established by the Commission and the Joint Board for evaluating redefinition requests. They fail to minimize cream skimming, and in fact propose to serve Upper Peninsula exchanges with population densities and access line densities much larger than the comparable densities of the portions of the Upper Peninsula study area that Dobson will not serve. They disregard the protected regulatory status of rural telephone companies, particularly the stringent public interest showing required for designation of competitive ETCs in rural telephone company service areas as well as the detailed analyses recommended by the Joint Board for redefinition of rural telephone company service areas. Finally, the proposed redefinitions will exacerbate the inequities and imbalances resulting from the receipt of High Cost Fund support by wireless ETCs like Dobson that is based upon rural telephone company costs determined for entire study areas (rather than smaller, "redefined" service areas).

Respectfully submitted,
UPPER PENINSULA TELEPHONE COMPANY, INC.
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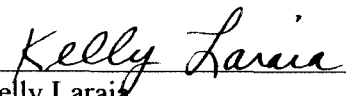
Dated: November 17, 2004

CERTIFICATE OF SERVICE

I, Kelly Laraia, hereby certify that a copy of the foregoing Opposition to Dobson Cellular System, Inc. Petition for Agreement with Redefinition of Service Areas of Certain Rural ILEC's in the State of Michigan was served by first class U.S. mail on this 17th day of November 2004 to the person listed below:

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